

**United States Department of Labor
Employees' Compensation Appeals Board**

R.C., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
OFFICE OF GENERAL COUNSEL,
Houston, TX, Employer**

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**Docket No. 17-1294
Issued: December 20, 2018**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 24, 2017 appellant filed a timely appeal from a December 1, 2016 merit decision and a May 11, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish an occupational disease causally related to accepted factors of her federal employment; and

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

(2) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On September 8, 2016 appellant, then a 46-year-old staff attorney, filed an occupational disease claim (Form CA-2), alleging that she developed high blood pressure, headaches, panic attacks, chronic neck and back pain, anxiety, and depression as a result of management increasing her case load and responsibilities and placing her on a performance improvement plan (PIP). She noted that she first became aware of her claimed condition on January 19, 1998 and realized its relationship to her federal employment in June 2016. J.R., appellant's supervisor, noted that during that time, appellant remained fully employed. He noted that her reasonable accommodation was not as presented by appellant.

Appellant submitted a chronological description of employment factors that caused her conditions. She noted that she worked as a litigator. In 2014 appellant requested reassignment to a nonlitigation position due to health problems, but the request was denied. Instead, she was granted a reasonable accommodation to assist her with her case load including being allowed to work from home full time, being assigned no more than 20 cases, suspension of her responsibility to train facility employees and interns, and limitation of her cases to only the Houston metropolitan area. Appellant indicated that the accommodations were honored until September 2015 when the employing establishment was realigned and the supervision of her duties was assigned to J.R. She indicated that, at that time, her case load gradually increased while cases from Dallas, TX; San Antonio, TX; Nebraska; and Wyoming were assigned to her. Appellant's travel expectations resumed, and her requirement to serve as "attorney of the week" increased. She indicated that J.R. placed her on a PIP for failing to meet case management standards, specifically the time management requirements, and she was required to meet with him weekly to discuss her performance. Prior to her scheduled PIP meetings on August 9, 22, and 31, 2016, appellant experienced shallow breathing, uncontrollable shaking, elevated blood pressure, light headedness, and headaches. She asserted that since being placed on the PIP, and with her increased case load, her blood pressure has frequently spiked. Appellant indicated that she was frequently badgered and excessively micromanaged by J.R. She indicated that as a result her injury efficiency, productivity, and effectiveness has been hindered and it became increasingly difficult to sustain her responsibilities.

In a September 14, 2016 statement regarding a description of employment factors that caused her illness, appellant noted that her history was significant for a motor vehicle accident in 1998 in which she sustained injuries to her head, neck, shoulders, and back. She was diagnosed with post-traumatic stress disorder, chronic pain, depression, anxiety, temporal mandibular joint syndrome, three bulging discs, and headaches. Appellant underwent three surgeries and took eight months off work. In 2002 she reached maximum medical improvement. Appellant reported being asymptomatic for 11 years when her condition was aggravated by work-related stress in 2013 and she took a five-month leave of absence in 2014. She reported no other personal stressors.

On September 14, 2016 the employing establishment disputed appellant's allegations. It asserted that she misstated the details of the reasonable accommodation in 2014, specifically, the employing establishment denied her request to limit the number of cases assigned to 20 and her

request to geographically restrict her case assignment to the Houston metropolitan area. The employing establishment advised that appellant's case load was at times close to 20 cases because the overall workload decreased, but as the workload increased appellant's workload increased proportionally to her coworkers above 20 cases. It indicated that she was assigned, but rejected work from clients located in Nebraska and Wyoming. The employing establishment noted that appellant was placed on a three-week rotation as "attorney of the week" for questions arising from its Houston, TX facility. It asserted that she refused to discuss any of her cases with J.R. despite being on a PIP, and she refused to keep her notes in the electronic case tracking system. The employing establishment noted that since July 14, 2016 appellant had been on a PIP, a period of increased scrutiny designed to help an employee improve performance, and denied badgering or micromanaging her. It further advised that she had not exhibited any disabling conditions caused by an on-the-job injury.

By development letter dated October 6, 2016, OWCP requested that appellant submit additional evidence in support of her claim, specifically a comprehensive medical report from her treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had caused her claimed injury. It further requested that appellant answer a questionnaire to substantiate the factual allegations of her claim. OWCP requested that the employing establishment comment on the accuracy of all statements. It afforded appellant 30 days to submit the requested evidence. No evidence was submitted.

In a memorandum dated October 26, 2016, J.R. disputed appellant's allegations and asserted that the employing establishment was not aware of an on-the-job injury sustained by appellant. He submitted a position description for a general attorney.

In a November 5, 2016 letter, appellant responded to OWCP's questionnaire. She requested an extension to file her physician's report. Appellant indicated that due to technical difficulties with her computer system, Dr. Pauline Clansy, would not be able to provide a report within the employing establishment's 30-day deadline, but would submit it on or before November 18, 2016. Appellant reiterated her allegations against the employing establishment previously noted. She noted no previous similar conditions.

By decision dated December 1, 2016, OWCP found that the injury occurred as described, but denied appellant's claim because she failed to submit medical evidence containing a medical diagnoses in connection with the injury or events. It pointed out that the medical evidence must establish that a diagnosed medical condition is causally related to the employment factors.

On February 15, 2017 appellant requested reconsideration and indicated that she submitted new and relevant evidence to support her request. She noted contacting OWCP on November 5, 2016 and advised that updated and relevant documentation to sustain her claim was delayed, but forthcoming, but that she would submit her completed questionnaire timely. Appellant asserted that she submitted the required information to sustain her claim on November 5, 2016. She referenced medical documentation from Dr. Clansy which provided a medical diagnosis that correlated the injury or events that exacerbated her condition. However, this document was not included in appellant's submission. Appellant asserted that she established "fact of injury" as a medical condition was previously diagnosed in connection with the claimed events and work factors. She asserted that based on the information provided the new evidence confirmed the

required parameters to determine the validity of this claim. Appellant submitted a chronological description of employment factors that caused her illness, her November 5, 2016 correspondence and response to OWCP's questionnaire, and a page from OWCP's decision dated December 1, 2016, all previously of record. She also submitted an e-mail from J.S. dated November 10, 2016 who denied her request for reassignment to a nonlitigation position. J.S. indicated that human resources conducted a search for a suitable position and could not find one. Appellant also referenced a clinical and mental examination from Charis Psychological Associates; however, this document was not submitted with her reconsideration request.

In an April 4, 2017 letter, appellant submitted a supplemental list of her treating physicians.

By decision dated May 11, 2017, OWCP denied appellant's February 15, 2017 request for reconsideration, finding that the evidence submitted was insufficient to warrant merit review.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty as alleged, and that any specific condition or disability claimed is causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.⁶ To establish fact of injury in an occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁷

The medical evidence required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the

³ *Supra* note 1.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *S.P.*, 59 ECAB 184, 188 (2007).

⁷ *R.R.*, Docket No. 08-2010 (issued April 3, 2009); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁸

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish an occupational disease causally related to the accepted factors of her federal employment. By development letter dated October 6, 2016, OWCP requested that appellant submit additional evidence in support of her claim, specifically a comprehensive medical report from her treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had caused her claimed injury. However, no medical evidence was submitted prior to OWCP's December 1, 2016 decision.

As noted, appellant's burden of proof includes the submission of rationalized medical opinion evidence, based on a complete factual and medical background, establishing causal relationship between the employment and the diagnosed condition.⁹ The record contains no medical evidence. Because appellant has not submitted reasoned medical evidence explaining how and why her diagnosed conditions were employment-related, she has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of FECA,¹⁰ OWCP has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(3) of the implementing federal regulations, which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence which:

“(i) Shows that OWCP erroneously applied or interpreted a specific point of law;
or

“(ii) Advances a relevant legal argument not previously considered by OWCP; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”¹¹

⁸ *Solomon Polen*, 51 ECAB 341 (2000).

⁹ *Supra* note 7.

¹⁰ 5 U.S.C. § 8128(a).

¹¹ 20 C.F.R. § 10.606(b)(3).

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.¹²

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim. In her request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. In a statement dated February 6, 2017, she requested reconsideration and indicated that she submitted new relevant evidence to sustain her request. Appellant noted contacting OWCP on November 5, 2016 and advised that updated and relevant documentation to sustain her claim was delayed, but forthcoming, but that she would submit her completed questionnaire timely. She asserted that she submitted the required information to sustain her claim on November 5, 2016. Appellant referenced medical documentation from Dr. Clansy which provided a medical diagnosis that correlated the injury or events that exacerbated her condition. She asserted that she established "fact of injury" as a medical condition was previously diagnosed in connection with the claimed events and work factors. These assertions are duplicative of arguments previously made by appellant. Furthermore, these assertions do not show a legal error by OWCP or a new and relevant legal argument. The Board has held that evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.¹³

In support of her request, appellant submitted a chronological description of employment factors that caused her illness, her November 5, 2016 correspondence and response to OWCP's questionnaire, and a page from OWCP's decision dated December 1, 2016. However, this evidence is duplicative of evidence previously submitted and considered by OWCP. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹⁴ Therefore, this report is insufficient to require OWCP to reopen the claim for a merit review.

The underlying issue in this case is whether appellant developed high blood pressure, headaches, panic attacks, chronic neck and back pain, anxiety, and depression as a result of management increasing her case load and responsibilities and placing her on a performance improvement plan. That is a medical issue which must be addressed by relevant new medical evidence.¹⁵ However, appellant did not submit any new and relevant medical evidence in support of her claim.

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by OWCP, appellant submitted an e-mail from J.S. dated November 10,

¹² *Id.* at § 10.608(b).

¹³ *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

¹⁴ See *Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

¹⁵ *Id.*; see also *Bobbie F. Cowart*, 55 ECAB 746 (2004).

2016 who denied her request for reassignment to a nonlitigation position. She also submitted a April 4, 2017 supplemental list of her treating physicians. While this evidence is new to the record, these documents are not relevant because the underlying issue is medical in nature.¹⁶ Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.¹⁷ OWCP denied the claim because appellant failed to submit any medical evidence containing a medical diagnoses in connection with the injury or events. Submission of these documents are not relevant to the underlying medical issue. Therefore, this new evidence is insufficient to warrant reopening the case for a merit review.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or submit relevant and pertinent new evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an occupational disease causally related to the accepted factors of her federal employment. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

¹⁶ See *W.D.*, Docket No. 09-0658 (issued October 22, 2009) (causal relationship is a medical issue).

¹⁷ *C.N.*, *supra* note 13.

ORDER

IT IS HEREBY ORDERED THAT the May 11, 2017 and December 1, 2016 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 20, 2018
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board